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EU VAT and Procurement: New Rules for Call-Off Stock Contracts

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In this article, the author evaluates new EU rules to harmonize and simplify the VAT consequences of call-off stock arrangements.

Call-off stock arrangements are a common procurement practice. Call-off stock contracts have become a common phenomenon in many sectors, especially in the automobile, construction, and aviation industries, because they give the customer easy access to stock when required. More and more EU manufacturers are maintaining call-off stocks in other member states.

Despite the EU's common and harmonized VAT system, the VAT treatment of call-off stock arrangements varies significantly from member to member. The VAT directive (2006/112/EC), which is the main source of VAT law in the EU, is silent on the VAT consequences of call-off stock contracts. Some member states have introduced simplification measures to lessen the compliance burden for nonresident suppliers using call-off stock arrangements.

To provide simplified and uniform treatment, the EU adopted new rules on December 2, 2018. They are part of the "quick fixes" package that seeks to improve the VAT system's day-to-day functioning for intra-EU trade and will take effect January 1, 2020.[1] This article evaluates the new rules for call-off stock arrangements.

What Is Call-Off Stock?

A call-off stock arrangement refers to a situation in which a company providing regular supplies to a customer keeps inventory in a warehouse that either belongs to, or is in close proximity to, the customer, and allows the customer to remove ("call off") the goods from the stock whenever he needs them. The supplier retains legal ownership of the goods until the customer calls for them. At the time of removal, the goods are supplied to the customer under civil law and the supplier issues an invoice, usually monthly. If the customer decides not to remove the goods from the call-off stock, they are returned to the legal owner (the supplier) and, from a civil law perspective, no supply is made.

Call-off stocks offer several advantages for customers. They allow companies to secure a supply of materials without having to finance and hold excess stock on-site. That reduces the risk of

[1] The quick fixes legislative package consists of Council Directive (EU) 2018/1910, amending Directive 2006/112/EC as regards the harmonization and simplification of certain rules in the value added tax system for the taxation of trade between member states; Council Regulation (EU) 2018/1909, amending Regulation (EU) No. 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements; and Council Implementing Regulation (EU) 2018/1912, amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions. In addition to providing a simplified and uniform treatment for call-off stock arrangements, the quick fixes seek to establish uniform criteria for chain transactions, make the VAT identification number a substantive condition to benefit from the zero rate for intra-Community supplies, and provide a common framework for the documentary evidence required to apply the zero rate to intra-Community supplies.

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material loss and damage that is likely to occur when taking delivery of an entire lot of materials at once. Moreover, taking delivery of smaller amounts of parts and materials means lower storage and security expenses. Under call-off contracts, timely delivery of the goods is ensured, which is particularly important if the goods must be transported over long distances (such as from abroad). Finally, call-off contracts are also beneficial to suppliers by guaranteeing them ongoing business over a long period.

Call-off stocks must be distinguished from consignment arrangements, in which a supplier (consignor) delivers goods to the storage facilities of a consignee, who intends to resell the goods to third parties. Consignment arrangements are typically used in distributing new products. To attract new distributors, the manufacturer or importer (consignor) may send goods on consignment to potential distributors (consignees), who do not need to finance the purchase. The consignees purchase the products from the consignors when they resell them. If a consignee cannot find a customer for the products, the consignment goods are returned to the consignor, and no supply takes place.

VAT Treatment of Call-Off Stock

Under article 17 of the VAT directive, a transfer by a taxable person of goods forming part of its business assets to another member state is deemed to constitute supply of goods for consideration. The deemed supply is made where the transport of goods begins and is zero-rated in the EU state of departure as an intra-Community supply of goods, if the taxable person holds documentary evidence showing that the goods have physically left the state. The deemed zero-rated intra-Community supply gives rise to a taxable intra-Community acquisition of the goods by their legal owner in the state of arrival.

Based on the above, a supplier that transfers his own goods to a call-off warehouse in another EU state performs a deemed intra-Community supply (in the state of departure) and a deemed intra-Community acquisition (in the state of arrival). To account for VAT on the intra-Community acquisition, the nonresident supplier must be registered for VAT purposes in the EU state where the call-off stock is kept. When the customer takes goods from the stock, the supplier is making a local supply in the state where the stock is located and must account for VAT on that supply, according to the general rules.

Some member states have adopted simplification measures for call-off stock arrangements to eliminate the VAT registration obligation of nonresident suppliers in the customer's state where the call-off stock is kept. Under those measures, the time when the intra-Community supply and acquisition are deemed made is postponed from the time the goods are transported to the call-off warehouse until the time the customer removes them.

However, the simplification measures vary across EU states. In some countries, the intra-Community acquisition of goods cannot be postponed indefinitely. If time limits expire and the goods still have not been removed from the call-off stock, the nonresident supplier is deemed to make both a deemed intra-Community supply and an intra-Community acquisition in the country where the goods were delivered. Many member states have expanded the scope of the simplification measures to include consignment goods as well.

What Will Change in 2020?

The Scope of the New Rules

The new rules seek to eliminate the need for the nonresident supplier to register in the member state where the stock is located. They will apply only to call-off stock arrangements that meet the following conditions:

- goods are dispatched or transported by the supplier or a third party on his behalf to another member state and are intended to be supplied to a customer who is entitled to take ownership of those goods in accordance with an existing agreement;
- the supplier has not established his business nor has a fixed establishment[2] in the member state to which the goods are dispatched or transported;

[2] A fixed establishment is characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to supply services or to receive and use services supplied to it for its own needs.

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- the customer is identified for VAT purposes in the member state to which the goods are dispatched or transported, and both his identity and VAT identification number are known to the supplier when the dispatch or transport begins; and
- the supplier records the transfer of the goods in a special register and records the customer's name and VAT identification number in his recapitulative statement (commonly known as an EC sales list).[3]

The new rules make clear that the simplification is unavailable when a company transfers goods from one member state to another without knowing the intended acquirer in that state.

It is however unclear whether the simplification may apply to cross-border commissionaire arrangements (for example, a principal in Member State 1 transfers goods to a commissionaire in Member State 2 who will resell the goods to customers in Member State 2). In a commissionaire structure, the commissionaire (distributor) enters into sales contracts with customers in its own name but on behalf of the principal. The goods remain the property of the principal until the legal title passes to the customer. Although the legal title does not pass to the commissionaire, there are two supplies for VAT purposes: (1) principal to commissionaire; and (2) commissionaire to customer. Both take place when the goods are supplied by the commissionaire to the customer. To clarify whether the transfer of goods by the principal to the commissionaire qualifies as a call-off stock arrangement, the term "ownership" in article 17a needs to be clarified. Does it refer to a legal transfer of ownership (which does not exist under a commissionaire arrangement between the principal and the commissionaire), or does it mean a transfer of ownership from a VAT perspective? If the latter is the case, cross-border commissionaire arrangements could benefit from the simplification measure.

One of the conditions for the simplification to apply is that the supplier is neither established nor has a fixed establishment in the arrival state. Therefore, it is important to know whether a supplier's having a warehouse to which he moves his own goods would automatically be excluded from the simplification because of having a fixed establishment in the country of arrival. In other words, the question is whether the supplier can act as a warehouse keeper of the call-off stock. The European Commission's VAT Committee has said that if the supplier owns a call-off stock warehouse in the country where the call-off stock is maintained, or rents it and hires an independent third person to run it, he has a fixed establishment in that state.[4] In those circumstances, article 17a of the VAT directive cannot apply. Thus, the simplification is possible only if the acquirer or a third person owns and runs the warehouse.

This definition of a call-off stock contract raises several other questions. First, the wording of the new provision suggests that the supplier must transport or arrange for the transport of the goods into the call-off stock warehouse. Does this mean that if the intended acquirer transports the goods, the simplification does not apply? Second, article 17a will not apply if the supplier is established in the country to which the goods are dispatched. However, it is unclear whether the supplier can be VAT-registered there and still benefit from the simplification. Third, it is not clear what the consequences are of an incorrect entry of the transfer of goods into a special register. Will the supplier face penalties, or will the simplification measure cease to apply?

VAT Consequences

Under new article 17a of the VAT directive, the transfer of goods to another member state under a call-off stock arrangement will be not be treated as a taxable transaction. When the customer removes goods from the stock, two taxable transactions will take place: a zero-rated intra-Community supply by the supplier in the departure state and an intra-Community acquisition by the customer in the state where the stock is located. Thus, a company moving goods to another member state under a call-off arrangement will not have to be registered for VAT purposes there.

[3] New article 17a of the VAT directive.

[4] EU VAT Committee, Working Paper No. 968 (May 15, 2019).

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If within 12 months of their arrival in the customer's country the goods have not been removed from the stock, an intra-Community supply will be deemed to have been made. The supplier may prevent that by returning the goods to the state from which they were transported and recording their return in a special register and his EC sales list.

If the call-off stock contract with the customer ceases to exist and there are still goods in a call-off warehouse, the supplier may still benefit from the simplification measures if he enters into a call-off agreement with another customer who will take ownership of the goods before the 12-month period expires (that period does not restart at the time of the customer substitution). The supplier must record the substitution in his register and record the new customer's VAT number in his EC sales list.

A question that arises regarding the 12-month period is how the goods in call-off stock should be tracked. While the timing of the placement and removal of identifiable goods can be easily recorded, non-identifiable bulk products are usually tracked based on inventory valuation methods (for example, last-in, first out). The new rules do not mention which inventory valuation method should be used.

If the supplier sells the goods to another person (without entering into a call-off contract), transports them to his own facilities in another member state, or exports them outside the EU, or if they are destroyed, the call-off arrangement ceases to exist, and the supplier is required to register in the country where the call-off stock was kept. The benefits of the simplification are gone.

Consider the following situation: On January 1 Company A in Member State A transports goods to Customer B's warehouse in Member State B under a call-off arrangement. In June four different events take place, the tax consequences of which are shown in the table.

Many companies have expressed concerns regarding the rule that in the event of the goods' destruction, loss, or theft, the conditions for the call-off stock arrangements cease to apply and a deemed intra-Community transfer and an intra-Community acquisition take place.[5] They have pointed out that losses generally occur for specific goods (for example, perishable or bulk products). To make article 17a workable and effective, some loss-related circumstances should not trigger the obligation to register for VAT purposes in the member state where the call-off stock is kept.

Some guidance on those types of loss-related circumstances might be found in the EU customs and excise legislation regarding total destruction or irretrievable loss of goods. Those rules provide that customs and excise duties are not chargeable if goods are destroyed:

- because of their general nature (for example, normal evaporation of some alcohol products);
- by unforeseeable circumstances or *force majeure*; or
- as a result of authorization or instruction by the competent authorities.

It would seem reasonable to adopt similar rules for call-off stocks.

Reporting Obligations

The new rules require both the transferor and transferee to keep a register of the goods.[6] Article 54a of the VAT Implementing Regulation provides more detailed rules on the content of registers for goods moved under call-off stock arrangements.

The supplier must also record in his EC sales list the acquirer's identity and VAT number (but not the value of the goods) when the goods are moved to call-off stock.[7] Any subsequent events (for example, removal of the goods or the substitution of the intended acquirer) must also be reflected in the EC sales list.

Conclusion

The variation in member states' simplification measures creates major problems for companies maintaining call-off stocks in other member states (particularly when the simplification measures apply in the state of origin but do not apply or are applied to a limited extent in the state where the call-off stocks are maintained, and vice versa).

[5] *Id*.

[6] Article 243(3) of the VAT directive.

[7] Article 262(2) of the VAT directive.

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Situations in Which the Call-Off Simplification Ceases to Exist

Event	VAT Consequences
Company A takes back part of the goods that were not supplied to Customer B and transports them to its own warehouses in Member State C.	In June, when the goods are transported to Member State C, a deemed transfer of the goods from Member State A to Member State B takes place because the call-off arrangement ceases to exist. Company A performs a deemed zero-rated intra-Community supply in Member State A and an intra-Community acquisition in Member State B. To declare its intra-Community acquisition, Company A must register in Member State B. The transport of the goods from Member State B to Member State C follows the general rules (a zero-rated intra-Community supply in Member State B followed by an intra-Community acquisition in Member State C).
Company A takes back part of the goods that were not supplied to Customer B and exports them outside the EU.	In June, when the goods are transported to Member State C, a deemed transfer of the goods from Member State A to Member State B takes place because the call-off arrangement ceases to exist. Company A performs a deemed zero-rated intra-Community supply in Member State A and an intra-Community acquisition in Member State B. To declare its intra-Community acquisition, Company A must register in Member State B. The transport of goods outside the EU follows the general rules for exportation.
Company A sells some goods to Customer X who is willing to pay a higher price than Customer B.	In June, the conditions for the call-off contract cease to exist regarding the goods supplied to Customer X. Company A is deemed to make an intra-Community supply in Member State A and an intra-Community acquisition in Member State B. To declare its intra-Community acquisition, Company A must register in Member State B. The supply from Company A to Customer X follows its own rules and is outside the scope of the call-off simplification measure.
All goods in the call-off warehouse are destroyed in a fire.	In June, when the goods are destroyed, the conditions for the call-off contract cease to exist. Company A is deemed to make an intra-Community supply in Member State A and an intra-Community acquisition in Member State B. To declare its intra-Community acquisition, Company A must register in Member State B.

Thus, the new EU-wide rules should be a welcome development. However, to ensure that they achieve simplification and consistency in the EU VAT treatment of call-off stocks, several practical issues still need to be clarified.

Further, it is unclear whether member states with broader simplification measures (for example, no time limits, coverage of consignment stock as well) will be allowed to retain them. On the one hand, the new rules can be seen as a minimum standard ensuring a level of harmonization that do not prevent the EU members from granting more generous domestic treatment. On the other hand, if divergent national rules continue to exist, the intended consistency and simplification will not be achieved. ■

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